Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.**	**Applicant(s)**
	10/736,119	BRANDEL ET AL.
	Examiner	**Art Unit**	
	Andrew T. Piziali	1771	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>07 July 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>*1-10*</u>.

    Claim(s) withdrawn from consideration: <u>*11-17*</u>.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive.

The applicant asserts that there is no motivation to modify Draxo or Edlund as taught by Stumpf, and that there is no reasonable expectation of success, because Stumpf is directed to nonwoven materials while Draxo and Edlund are directed to woven materials. The examiner respectfully disagrees. Draxo clearly discloses that while the preferred embodiment of the invention utilizes glass fabrics in woven form, nonwoven fabrics may be utilized (column 2, lines 20-22). In addition, Edlund clearly discloses that while the preferred embodiment of the invention utilizes glass fabrics in woven form, nonwoven fabrics may be utilized (column 2, lines 15-17). It is noted that Stumpf is reasonably pertinent to the particular problem with which the applicant was concerned, which is forming a fabric that is aesthetically pleasing to the sight and touch.

The applicant asserts that there is no motivation to increase the titer because it is undesirable to increase the coarseness and stiffness, but the applicant admits that a higher titer increases strength. The examiner contends that although it may be desirable to possess the highest strength with the highest flexibility, one skilled in the art has to sacrifice between the two because they are inversely related in terms of titer. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the titer of the warp fiber, such as from 270 to 300 tex, because it is understood by one of ordinary skill in the art that the titer determines properties such as flexibility, strength, depth of pile, degree of loft of the loops, and appearance of the fabric, because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art, and because some applications desire or require high strength.

Regarding applicant's assertion that Moll teaches away from the claimed titer, it is noted that Moll is simply cited to reject dependent claim 8 because it discloses the claimed warp density. Moll is noted cited in the rejection of claims 1-7 and 9-10. Motivation exists to vary the titer as explained in the above paragraph.

The applicant asserts that there is no motivation to modify Draxo or Edlund as taught by Kolzer, and that there is no reasonable expectation of success, because there are alleged "significant differences between the fabrics disclosed in the primary references and that disclosed in Kolzer." The examiner respectfully disagrees. The applicant appears to be arguing non-analogous art. In response to applicant's argument that Kolzer is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kolzer is in the field of applicant's endeavor, which is impregnated woven glass fabrics.

It is further noted that the warp fibers of Edlund or Draxo could be considered the claimed weft fibers and the weft fibers or Edlund or Draxo could be considered the claimed warp fibers. The "warp" and "weft" fibers are associated with the direction of the fibers as they exit a weaving machine, but once the fabric is isolated from the machine, the machine and cross-machine fiber directions are indistinguishable.

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PATENT EXAMINER